

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SPECIALTY NATIONAL INSURANCE
COMPANY,

Plaintiff,

-against-

ENGLISH BROTHERS FUNERAL HOME,

Defendant.

SIDNEY H. STEIN, U.S. District Judge.

For the reasons set forth in the Opinion of this Court dated March 30, 2009, IT IS
HEREBY ORDERED THAT:

1. The cross-motions of the parties for summary judgment [16, 23] are decided as follows:
 - a. Plaintiff's motion for summary judgment is denied in full;
 - b. This action is dismissed without prejudice as premature to the extent it seeks a declaration that plaintiff has no duty to indemnify defendant;
 - c. Defendant's motion for summary judgment is granted insofar as it seeks a declaration that plaintiff must defend it in each of the underlying actions and is otherwise denied.
2. The request of English Brothers for reasonable attorneys' fees and costs is granted. Defendant shall submit a schedule of its fees and costs on or before April 17, 2009 and Plaintiff may respond on or before May 1, 2009.

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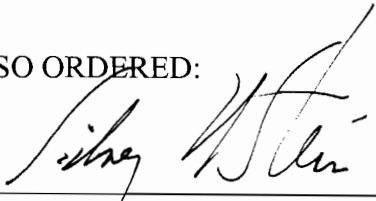
07-civ-7507 (SHS)

ORDER

3. Plaintiff's motion to strike the affidavit of Frank Resto [25] is denied. The affidavit sets forth the basis for Resto's personal knowledge of the affiant's statements and, in particular, his claim that "neither I nor English Brothers was a participant in the scheme." (Aff. of Frank Resto dated June 5, 2008 ¶ 4.) The Court accepts that affidavit as a statement of defendant's position in this and the underlying litigations.

Dated: New York, New York
March 30, 2009

SO ORDERED:



Sidney H. Stein, U.S.D.J.